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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,469	10/31/2003	Heather Lynn Focht	9081M	2774

27752 7590 09/27/2006

THE PROCTER & GAMBLE COMPANY
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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/699,469	Applicant(s) FOCHT ET AL.	
	Examiner Necholus Ogden	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-20,23-39 and 41-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-20, 23-39 and 41-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 7, 13, 18, 26, 32, and 37 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention is maintained.
2. Claims 1-13, 16-20, 22-32 and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitra (6,534,457) or Hayward et al (6,534,456) is withdrawn in view of applicant's amendment.
3. Claims 14-15 and 33-34 rejected under 35 U.S.C. 103(a) as being unpatentable over Mitra (6,534,457) or Hayward et al (6,534,456) in view of Williams et al (6,429,177) is withdrawn in view of applicant's amendment.

Claims 1-20 and 22-38 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending 10/665,670;10/050,494;10/841,174;10/963,166;10/961,719;11/263,749;11/198,618;11/198,538;11/197,982;11/001,796;11/178,047;11/198,866 is withdrawn in view of applicant's terminal disclaimer and/or arguments.

Response to Arguments

4. Applicant's arguments with respect to claims 1-2, 4-20, 23-39 and 41-54 have been considered but are moot in view of the new ground(s) of rejection.

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5. Claims 1-2, 4-20, 23-39 and 41-54 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Focht et al (2004/0092415).

Focht et al disclose a striped liquid cleaning composition having a Vaughn Solubility parameter of from 5 to 15 and a consistency value from 1 to 10,000 poise. The striped liquid cleansing composition further comprises a first stripe cleansing phase comprising from 1 to about 50% by weight of a surfactant such as anionic, nonionic and amphoteric surfactants; and wherein said phase has a viscosity of greater than 3,000 cps and a yield value of at least 0.1 Pa; and a benefit phase comprising from about 20% to 100% by weight of a hydrophobic material such oils (page 1, 0009-0013). Focht et al further teach that said composition comprises a colorant and that said stripes are at least about 0.1mm in width to 1mm in length (page 2, 0016 and 0027). With respect to the alkanolamide component, Focht et al teach that said component comprises from 0.1 to about 10% by weight and further comprise an electrolyte, present in an amount from 0.1 to 15% by weight (page 5, 0066-0070). Focht et al teach that a structurant such as trihydroxystearin is present (page, 8, 01030-0104); microspheres are added to improve density or increase stability (0054-0057); and said compositions are packaged in a transparent container that includes instructions on the cap of said container (page 10, 0124). See Table I.

As this reference teaches all of the instantly required it is considered anticipatory. In the alternative, if the above listed claims do not anticipate the claimed invention, it would have nonetheless been obvious to one of ordinary skill in the art to combine the

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components to specifically teach the claimed invention, because Focht et al teach each of the claimed component in their requisite proportion.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-2, 4-20, 23-39 and 41-54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/836,984. Although the conflicting claims are not identical, they are not patentably distinct from each other because they overlap in subject matter pertaining to personal cleansing compositions comprising surfactants, electrolytes, density microspheres and adjunct material.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Necholus Ogden
Primary Examiner
Art Unit 1751

No
9-24-2006